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ELECTION OF JUDGES OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

Memorandum by the Secretary-General

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I. INTRODUCTION

1. By its resolution 827 (1993) of 25 May 1993, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 ("International Tribunal") and adopt the Statute of the International Tribunal annexed to the Secretary-General's report prepared pursuant to Security Council resolution 808 (1993) of 22 February 1993.

2. At its 94th plenary meeting, on 27 March 1997, the General Assembly decided, on the proposal of the Secretary-General (A/51/237, para. 1), to include in the agenda of its fifty-first session an item entitled "Election of judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991" (item 166).

3. Pursuant to article 13, subparagraph 2 (a), of the Statute of the International Tribunal, the Legal Counsel, on behalf of the Secretary-General, invited, by circular letter of 13 January 1997, all States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for judges of the International Tribunal. In accordance with article 13, subparagraph 2 (b), of the Statute, each State was invited to nominate, within 60 days of the date of the invitation and not later than 13 March 1997, up to two candidates, no two of whom were to be of the same nationality.

4. By 13 March 1997, the Secretary-General had received 19 nominations. The nominations received were forwarded by the Secretary-General to the President of the Security Council in accordance with article 13, subparagraph 2 (c), of the Statute of the International Tribunal. At its 3763rd meeting, on 8 April 1997, the Security Council, in accordance with article 13 (d) of the Statute, decided to forward the list of 19 nominations to the General Assembly. The list was adopted by the Council in its resolution 1104 (1997) of 8 April 1997, and was formally conveyed to the President of the General Assembly by letter dated 8 April 1997 from the President of the Security Council (A/51/867).

5. The list of candidates for judges and the procedure for the election of the judges of the International Tribunal are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document (A/51/878).

II. LIST OF CANDIDATES FOR JUDGES OF THE INTERNATIONAL TRIBUNAL

6. The list of candidates for judges of the International Tribunal is as follows:

Mr. Masoud Mohamed Al-Amri (Qatar)
Mr. George Randolph Tissa Dias Bandaranayake (Sri Lanka)
Mr. Antonio Cassese (Italy)

Mr. Babiker Zain Elabideen Elbashir (Sudan)
Mr. Saad Saood Jan (Pakistan)
Mr. Claude Jorda (France)
Mr. Adolphus Godwin Karibi-Whyte (Nigeria)
Mr. Richard George May (United Kingdom of Great Britain and Northern Ireland)
Ms. Gabrielle Kirk McDonald (United States of America)
Ms. Florence Ndepele Mwachande Mumba (Zambia)
Dr. Rafael Nieto Navia (Colombia)
Dr. Daniel David Ntanda Nsereko (Uganda)
Dr. Elizabeth Odio Benito (Costa Rica)
Dr. Fouad Abdel-Moneim Riad (Egypt)
Mr. Almiro Simões Rodrigues (Portugal)
Mr. Mohamed Shahabuddeen (Guyana)
Prof. Jan Skupinski (Poland)
Prof. Wang Tieya (China)
Mr. Lal Chand Vohrah (Malaysia)

III. PROCEDURE FOR THE ELECTION OF JUDGES

7. The election of judges will take place in accordance with the following provisions:

(a) Article 13 of the Statute of the International Tribunal;

(b) Given the similar nature of the election of judges of the International Court of Justice and the election of judges of the International Tribunal, it was decided at the time of the previous election of judges in 1993 to follow similar election procedures in the General Assembly. The Secretary-General suggests that this precedent be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the election of judges of the International Tribunal.

8. In accordance with article 13, subparagraph 2 (a), of the Statute of the International Tribunal, the Holy See and Switzerland, the two non-member States maintaining permanent observer missions at United Nations Headquarters which were invited to nominate judges for the International Tribunal, will participate in the election in the same manner as the States Members of the United Nations.

9. On the date of the election, the General Assembly will elect 11 judges from the list of candidates submitted to it by the Security Council. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for not more than 11 candidates.

10. The candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected (art. 13, subpara. 2 (d), of the Statute).

11. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote. The electors, for this purpose, are all the Member States and the two non-member States mentioned in paragraph 8 above. Accordingly, 94 votes constitute an absolute majority in the General Assembly for the purpose of electing judges of the International Tribunal.

12. If fewer than the required number of candidates obtain the absolute majority in the first ballot, a second ballot will be held and balloting will continue at the same meeting until the required number of candidates obtain an absolute majority. Following the practice in the election of judges of the International Court of Justice, subsequent balloting shall be unrestricted. Accordingly, following the first ballot, in which each elector may vote for not more than 11 candidates, in any subsequent ballots, each elector may vote for 11 candidates less the number of candidates who have already obtained absolute majorities.

13. If more than the required number of candidates obtain the absolute majority of votes in the first ballot, a second ballot will be held on all candidates and balloting will continue at the same meeting until the required number of candidates, and no more, obtain an absolute majority. In any such case, each elector may vote, in the first ballot and in any subsequent ballot, for 11 candidates.

14. When 11 candidates obtain the required majority, the President of the General Assembly shall declare the candidates elected.